FILE COPY

MAY 7 19
CHARLES ELMORE

IN THE

Supreme Court of the United States

W. B. WORTHEN COMPANY, AGENT, GEORGE G. WORTHEN AND MOLLIE P. WORTHEN ..... *Appellants,*

v. No. 856

MRS. W. D. THOMAS ..... *Appellee.*

APPELLANTS' REPLY BRIEF

HENRY M. ARMISTEAD,
EUGENE H. MURPHY,
FRANCIS T. MURPHY,

Attorneys for Appellants.

DEMOCRAT P. & L. CO., LITTLE ROCK

APPELLANTS' REPLY BRIEF

INDEX

	Page
ARGUMENT AND BRIEF	3

TABLE OF CASES AND STATUTES CITED

Act 141 of the Acts of Arkansas, 1931, p. 378 (also appendix)	3, 7
Act 102 of the Acts of Arkansas, 1933, p. 321	6
Baron v. Brummer, 3 N. E. 474	4
Crawford & Moses' Digest, Ark. Statutes, Sec. 5579	3, 7
Mente v. Townsend, 68 Ark. 391	4
New York Laws:	
Chapter 80, Laws of 1840, p. 59	3
Chapter 187, Laws of 1858, page 306	4
Chapter 70, Laws of 1862, page 214	4
Chapter 656, Laws of 1866, page 1413	4
Chapter 277, Act of April 18, 1870, page 612	4
Chapter 248, Act of May 5, 1879, page 326	4
Chapter 272, Act of April 17, 1896, Section 22, page 215	4
Strauss v. Missouri State Life Insurance Co., 66 S. W. (2d) 299 (The Law Reporter, Volume 52, No. 11, page 589)	5
Townes v. Krumpen, 184 Ark. 910	4
Appendix (Act 141 of the Acts of Arkansas, 1931, p. 378)	7

IN THE

Supreme Court of the United States

W. B. WORTHEN COMPANY, AGENT, GEORGE G. WORTHEN AND MOLLIE P. WORTHEN ..... *Appellants,*

v. No. 856

MRS. W. D. THOMAS ..... *Appellee.*

APPELLANTS' REPLY BRIEF

Appellee says at page 12 of her brief that this insurance fund is exempt under the provisions of Act 141 of the Acts of Arkansas of 1931; that such act was adopted from the New York Act of 1840, which has been construed by the New York courts as an exemption statute for the wife, and, not having been otherwise construed by the Supreme Court of Arkansas, the New York construction is controlling. This claim was not made at any previous stage of this proceeding and the provisions of Act 141 were not invoked.

The fact is that Arkansas did adopt the New York law in 1873. Section 5579, Crawford & Moses' Digest of the Statutes of Arkansas (1921). After New York adopted the law, which is said to be the first instance of its adop-

tion, it was there amended and changed several times. Chapter 187, Laws of 1858, page 306; Chapter 70, Laws of 1862, page 214; Chapter 656, Laws of 1866, page 1413; Chapter 277, Act of April 18, 1870, page 612; Chapter 248, Act of May 5, 1879, page 326; Chapter 272, Act of April 17, 1896, Section 22, page 215.

During the course of the years the New York laws were construed by the courts of that State. It was held that the wife's interest was not assignable. Some of these decisions are referred to in the case of *Baron* v. *Brummer*, New York Court of Appeals, 3 N. E. 474. That opinion says that the construing decisions arose under various provisions of the amendatory legislative acts. Arkansas did not adopt the New York construction. The New York law of 1840, adopted here in 1873, was not changed by the Legislature of Arkansas until 1931. It remained in force exactly as it had originally been adopted in New York. In the case of *Mente* v. *Townsend*, 68 Ark. 391 (1900) it was decided that a wife might assign her interest in such a policy. The act of 1873 is quoted in full and construed and the decision of the Supreme Court of Arkansas in that case is directly opposite to the New York decisions. In the case of *Townes* v. *Krumpen*, 184 Ark. 910 (1931), the Supreme Court again construed the act, setting it forth in full and saying:

> "Our said statute was obviously borrowed from the laws of New York, being in the identical language of its statute of 1840, which had not been construed, so far as we can ascertain, by any of its courts before its enactment here in 1873, and any later construction of

the statute by the courts of that State is not presumed to have been adopted in its enactment here and is in no wise controlling upon our courts. (Citing cases). Most of the New York cases cited were in construction of its amended statutes."

It will thus be seen that the Arkansas court is not for any reason bound by the New York decisions. It has refused to adopt them or follow them and has specifically decided otherwise. Besides which, the New York decisions are not Apposite, as they arise under a different frame of laws and under differing amendments and alterations. In addition to this, Arkansas' Act 141 of 1931, which is an amendment to the statute of 1873, is not identical or even substantially the same as the New York law of 1840. We set it out in an appendix italicizing that part which re-enacts the law of 1840. It will be seen that additions are made to the law of 1840, having other objects in purview, and that no intention is expressed or implied to exempt the proceeds of life insurance from the wife's creditors. It is so plainly true that she had no such exemption that the Legislature was moved to adopt Act 102 of the 1933 session, in which enactment her exemption originates.

In view of the decision appealed from and now before this court it is curious to note a decision of the Supreme Court of Arkansas delivered December 4, 1933, not yet officially published, *Strauss* v. *Missouri State Life Insurance Company*, 66 S. W. (2d) 299, (The Law Reporter, Volume 52, No. 11, page 589). The third headnote is;

"Under a policy of life insurance, when the insured died and proof of the death was submitted to

and approved by the insurance company, the rights of the parties became vested and no subsequent act of the Legislature could impair such vested rights."

It appears inferentially from the decision that the appellant was the beneficiary in two policies of insurance when the proceeds became recoverable, but which were offset by the insurance company on her indebtedness to it, and that she sued for the insurance, claiming it as exempt under Act 102. The court said:

"It is next contended that Act 102 of 1933 exempts the proceeds of the two policies of insurance in this controversy to appellant. On this question but little need be said. The testimony shows that the insured died in April, 1932; that the proof of death was made and approved by appellee on May 6, 1932. On the happening of these two events, that is to say, the death of the insured and the acceptance of the proof of death, the rights of the parties to the proceeds of said insurance became vested, and no subsequent act of the Legislature could impair this vested right. We therefore hold that act 102 of the Acts of 1933 has no application to the facts in this case."

Appellants here repeat their contention that the decision in this case destroyed vested rights; that as the act, as construed by the Arkansas court retrospectively denies all judicial process for the enforcement of a judgment and destroys a lien which had been fixed, it is unconstitutional.

Respectfully submitted,

HENRY M. ARMISTEAD,
EUGENE H. MURPHY,
FRANCIS T. MURPHY,
Attorneys for Appellants.

APPENDIX

Act 141 of the Acts of Arkansas, 1931, page 378

Section 1. That Section 5579 of Crawford & Moses' Digest of the Statutes of Arkansas be amended to read as follows:

"Section 5579. *It shall be lawful for any married woman, by herself and in her name, or in the name of any third person, with his assent, as her trustee, to cause to be insured, for her sole use, the life of her husband, for any definite period, or for the term of his natural life; and, in case of her surviving her husband, the sums or net amount of the insurance becoming due and payable by the terms of the insurance shall be payable to her and for her use; and, in case of the death of the wife before the decease of her husband, the amount of said insurance may be made payable to his or her children, for their use, and to their guardian for them, if they shall be under age, as shall be provided in the policy of insurance; and all proceeds and avails of such insurance shall be free from the claims of the representatives of the husband, or of any of his creditors,* whether or not the right to change the beneficiary is reserved or permitted; provided, that subject to the statute of limitations, the amount of any premiums for said insurance paid out of the funds or property of the husband with intent to defraud creditors, with interest thereon, shall enure to their benefit from the proceeds of the policy; but the company issuing the policy shall be discharged of all liability thereon

by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice, by or in behalf of a creditor of a claim to recover for premiums paid with intent to defraud creditors, with specifications of the amount claimed, provided, this act shall not apply to pending suits."